

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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MONTVALE SURGICAL CENTER, LLC  
a/s/o JUSTIN GUTSCHMIDT,

Plaintiff,

v.

HORIZON BLUE CROSS BLUE SHIELD  
OF NEW JERSEY INC. and DISTRICT  
COUNSEL IRONWORKERS WELFARE  
FUND OF NORTHERN NEW JERSEY,

Defendants.

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**Civil Action No. 12-3685 (SRC)**

**ORDER**

**CHESLER**, District Judge

This matter having come before the Court upon two separate motions to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), one filed by Defendant Ironworkers District Council of North Jersey Welfare Fund (the “Funds”) [docket entry no. 6] and the other by Defendant Horizon Blue Cross Blue Shield of New Jersey Inc. (“Horizon”) [docket entry no. 12]; and

**IT APPEARING** that Defendants’ motion papers as well as Plaintiff’s opposition brief present matters outside the pleadings; and it further

**APPEARING** that the Court will not exclude these matters from consideration; and it further

**APPEARING** that pursuant to Federal Rule of Civil Procedure 12(d), the Court must therefore treat the motion as one for summary judgment; and it further

**APPEARING** that the Court must give all parties a reasonable opportunity to present all the material that is pertinent to the motion;<sup>1</sup> and it further

**APPEARING** that the Court must notify the parties of the conversion of the motion to dismiss to one for summary judgment;<sup>2</sup> therefore,

**IT IS** on this 18<sup>th</sup> day of December, 2012,

**ORDERED** that, pursuant to Rule 12(d), the Fund's motion to dismiss [docket entry no. 6] be and hereby is converted to a motion for summary judgment, to be adjudicated under the standard set forth by Rule 56; and it is further

**ORDERED** that, pursuant to Rule 12(d), Horizon's motion to dismiss [docket entry no. 12] be and hereby is converted to a motion for summary judgment, to be adjudicated under the standard set forth by Rule 56; and it is further

**ORDERED** that, no later than Tuesday, January 8, 2013, the Funds and Horizon shall file any additional material, including any briefs, affidavits or other evidence, they wish the Court to consider in evaluating their respective motions; and it is further

**ORDERED** that, no later than Friday, January 25, 2013, Plaintiff shall file any additional material in opposition to the motions that he wishes to Court to consider; and it is further

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<sup>1</sup> Crown Central Petroleum v. Waldman, 634 F.2d 127, 129 (3d Cir.1980) (holding that parties are entitled to at least 10 days' notice before conversion of Rule 12(b)(6) motion to motion for summary judgment); see also Phat Van Le v. University of Medicine & Dentistry of N.J., 379 F. App'x 171, 176 (3d Cir. 2010) (holding that upon conversion of a motion to dismiss to one for summary judgment, district court had given sufficient notice and opportunity to submit relevant material where the defendants were afforded 20 days to submit material and the plaintiff afforded an additional 17 days to respond).

<sup>2</sup> Crown Central Petroleum, 634 F.2d at 129.

**ORDERED** that, no later than Friday, February 1, 2013, the Funds and Horizon may file their replies, if any, in further support of the motions; and it is further

**ORDERED** that the motions will be decided on the papers submitted, pursuant to Federal Rule of Civil Procedure 78, unless the Court notifies otherwise.

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

